UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	
DAVID GORDON WALLACE, JR.,	§	**CASE NO. 15-31594**
	§	
DEBTOR.	§	**(CHAPTER 7)**
	§	

MOTION OF RODNEY D. TOW, CHAPTER 7 TRUSTEE,
FOR ORDER AUTHORIZING ABANDONMENT OF
PROPERTY OF THE ESTATE

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE JEFF BOHM:

Rodney D. Tow, the Chapter 7 Trustee (the "Trustee") appointed in the Chapter 7 case of David Gordon Wallace Jr. (the "Debtor"), files this *Motion for Order Authorizing Abandonment of Property of the Estate* (the "Motion").

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this

district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are §§ 105(a), 554, and 704 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (as amended, the "Bankruptcy Code").

BACKGROUND

2. On March 24, 2015 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code.

3. After the Petition Date, the United States Trustee appointed Rodney D. Tow to serve as the duly qualified and acting Chapter 7 trustee of the Debtor's estate.

4. On April 7, 2015, the Debtor filed his Schedules of Assets and Liabilities (as amended, the "Schedules") and Statement of Financial Affairs (the "SOFA") [together, Docket No. 20]. On the Schedules, the Debtor reported an ownership interest in Virginia Acquisitions, LLC ("Virginia Acquisitions"). Schedules, p. 11.

5. Virginia Acquisitions' only major asset is an ownership interest in a warehouse located at 1301 S. Virginia Avenue, Joplin, MO 64801-4641 (the "Joplin Warehouse").

6. Virginia Acquisitions also previously had a bank account with Arvest Bank (the "Arvest Bank Account").

7. On July 1, 2015, the Trustee filed a Notice of Rule 2004 Examination of Virginia Acquisitions, LLC [Docket No. 95] (the "2004 Examination Notice"), requesting production of, among other things, all in-effect bylaws, operating agreements, articles of incorporation or organization, and other documents relating to the formation, ownership, operation, and governance of Virginia Acquisitions. The Trustee did not receive a response by the July 31, 2015 deadline set forth in the 2004 Examination Notice.

8. On August 19, 2015, the Court entered an order [Docket No. 119] (the "Turn Over Order") requiring Bill Ewing, a 50% owner of Virginia Acquisitions, to turn over the

company agreement for Virginia Acquisitions to the Trustee. The Trustee did not receive a response by the August 20, 2015 deadline set forth in the Turn Over Order.

9. On August 28, 2015, the Court entered an Order granting the Trustee's Motion to Compel Virginia Acquisitions, LLC and Bill Ewing to Produce Documents and for Contempt Sanctions [Docket No. 132].

10. On September 23, 2015, the Court entered a Second Supplemental Order granting the Trustee's Motion to Compel Virginia Acquisitions, LLC and Bill Ewing to Produce Documents and for Contempt Sanctions [Docket No. 145].

11. On November 12, 2015, the Court entered a Third Supplemental Order granting the Trustee's Motion to Compel Virginia Acquisitions, LLC and Bill Ewing to Produce Documents and for Contempt Sanctions [Docket No. 160]. As a further sanction for Virginia Acquisition and Bill Ewing's continued noncompliance with the 2004 Examination Notice and the Turn Over Order, the Court appointed the Trustee as receiver (the "Receiver") of Virginia Acquisitions, with full powers of an equity receiver, including, but not limited to, full power to sell, liquidate, or otherwise monetize the Joplin Warehouse.

12. The Receiver employed the services of the Glenn Group Real Estate to assist the Receiver in selling, liquidating, or otherwise disposing of the Joplin Warehouse. Since November 24, 2015, the Receiver has been unable to sell, liquidate, or otherwise dispose of the Joplin Warehouse.

13. The Joplin Warehouse served as Virginia Acquisition's collateral for a commercial loan from Arvest Bank. On July 18, 2016, Arvest Bank foreclosed on and took possession of the Joplin Warehouse, and Arvest Bank remains in possession of the Joplin

Warehouse as of the date of this Motion. On February 1, 2017, the Trustee confirmed that Arvest Bank forcibly closed the Arvest Bank Account due to a continuing negative balance.

RELIEF REQUESTED

14. By this Motion, the Trustee requests entry of an order substantially in the form attached hereto (the "Proposed Order") authorizing the Trustee to abandon the interest in Virginia Acquisitions, as set forth on Exhibit A attached hereto (the "Burdensome Property") and removing the Trustee as Receiver of Virginia Acquisitions.

BASIS FOR RELIEF

15. Section 554(a) of the Bankruptcy Code provides that "the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

16. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

17. The Trustee determined that Arvest Bank foreclosed on the Joplin Warehouse owned by Virginia Acquisitions and that the Arvest Bank Account is closed. Accordingly, the ownership of Virginia Acquisitions is of inconsequential value to the estate and would be burdensome to maintain, and the Trustee, in the reasonable exercise of his business judgment, should be permitted to abandon it. *See Frostbaum v. Ochs*, 277 B.R. 470, 475 (E.D.N.Y. 2002) (stating that a trustee may use his discretionary business judgment in deciding when to abandon burdensome or valueless property of the estate); *see also In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill. 1997) (stating that in reviewing a trustee's decision to abandon property of the estate, the court must only examine that decision to ensure it reflects a

business judgment made in good faith). On information and belief, Virginia Acquisitions has no other assets.

18. As a result of the foregoing, the Trustee seeks to abandon the Burdensome Property effective as of the date of the entry of the Proposed Order.

19. Additionally, the Trustee seeks to be removed as Receiver of Virginia Acquisitions since there is no property to administer.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an order in the form of the Proposed Order attached hereto and provide such other relief that is just and proper.

DATED: February 20, 2017

Respectfully submitted,

DIAMOND McCARTHY LLP

By: */s/ Charles M. Rubio*

Kyung S. Lee
TBA No. 12128400
klee@diamondmccarthy.com
(713) 333-5125
Charles M. Rubio
TBA No. 24083768
crubio@diamondmccarthy.com
(713) 333-5127
909 Fannin, Suite 1500
Houston, Texas 77010
(713) 333-5100 Telephone
(713) 333-5195 Facsimile

COUNSEL TO RODNEY D. TOW, CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I certify that on February 20, 2017, a true and correct copy of the foregoing document was served by (i) the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas to all parties registered to receive such service; and (ii) transmitted to the parties listed on the attached Limited Service List by first class mail, postage prepaid, within one business day of this filing.

/s/ *Charles M. Rubio*

Exhibit A

Burdensome Property

Burdensome Property	**Asset of Burdensome Property**	**Reason Burdensome**
Ownership interest in Virginia Acquisitions	Warehouse located at 1301 S. Virginia Avenue, Joplin, MO 64801-4641 which has been foreclosed on by Arvest Bank	Ownership interest in Virginia Acquisitions is of inconsequential value because its only major asset, the Joplin Warehouse, has been foreclosed and is in the possession of Arvest Bank

LIMITED SERVICE LIST

David Gordon Wallace, Jr.
1634 Brookstone Lane
Sugar Land, TX 77479

Janet S. Casciato-Northrup
Law Offices of Janet S. Northrup, P.C.
333 Clay St., Suite 2835
Houston, TX 77002

Hector Duran, U. S. Trustee
Office of the United States Trustee
515 Rusk Ave, Suite 3516
Houston, TX 77002-2604

Ally Financial
P.O. Box 8104
Cockeysville, MD 21030

Cornerstone Home Lending
1177 West Loop South, Suite 200
Houston, TX 77027

Fort Bend County Tax Office
1317 Eugene Heimann Circle
Richmond, TX 77469

Greatwood Homeowners Association
8802 Greatwood Parkway
Sugar Land, TX 77479

Hari Agrawal
Can Metals Limited
4800 Sugar Grove Blvd., Suite 475
Stafford, TX 77477

Lamar Consolidated Independent School District
1317 Eugene Heimann Circle
Richmond, TX 77469

Neal Jain
17 St. Peters Walk
Sugar Land, TX 77479

Internal Revenue Service
Insolvency Section
1919 Smith Street
Stop 5024 HOU
Houston, TX77002

Kathy Wingo
14402 West Bellfort, Unit 212
Sugar Land, TX 77498

American Express
P.O. Box 3001
16 General Warren Blvd.
Malvern, PA 19355

American International Alliance, LP
8108 Old Hixon Road
Tampa, FL 33626

Arvest Bank
P.O. Box 799
Lowell, AR 72745

Bain & Barkley
14090 Southwest Freeway, Suite 450
Sugar Land, TX 77478

BBVA Compass Bank
P.O. Box 77210
Houston, TX 77210

Brian Stanley
c/o Robert G. Miller
O'Donnell, Ferebee & Frazier, PC
450 Gears Road, Eighth Floor
Houston, TX 77067

Capital One Bank (USA) N.A.
P. O. Box 30285
Salt Lake City, UT 84130

Charles Clements
P.O. Box 90661
Austin TX 78709

Chase Card
P.O. Box 15298
Wilmington, DE 19850

David Spadafora
c/o Frost Bank
100 West Houston Street
San Antonio, TX 78205

David Wallace, Sr.
1 Bishop Gadsden Way, Cottage 21
Charleston, SC 29412

Dinesh Shah
One Sugar Lakes
4660 Sweetwater Blvd., Suite 300
Sugar Land, TX 77479

Financial Control Services
6801 Sanger Avenue, Suite 195
Waco, TX 76710

Fullenweider Wilhite
4265 San Felipe Street, Suite 1400
Houston, TX 77027

Kay Parker
Fitts Roberts
5718 Westheimer, Suite 800
Houston, TX 77057

Lowery Bank
c/o Stephanie J. Stigant
The Holoway Jones Law Firm, P.L.L.C.
407 Julie Rivers Drive
Sugar Land, TX 77478

New Prime, Inc.
2740 N. Mayfair
Springfield, MO 65803

Porter & Hedges, LLP
1000 Main Street, 36th Floor
Houston, TX 77002

Steven Bain
Steven Bain Law Offices
12620 Tesson Ferry Road, Suite 121
St. Louis, MO 63128

ZT Global
11233 Shadow Creek Parkway, Suite 300
Pearland, TX 77854

Costa Bajjali
2911 Waters Lake Lane
Missouri City, TX 77459

Frost Bank
c/o L. David Smith
Chernosky, Smith, Ressling& Smith, PLLC
4646 Wild Indigo, Suite 110
Houston, TX 77027

Stonehenge Companies, LLC C/O Patrick L.
Hughes Haynes and Boone, LLP
1221 McKinney, Suite 2100
Houston, TX 77010

Community Bank & Trust, Waco, Texas
c/o Jeffrey R. Cox
Sheehy, Lovelace & Mayfield, P.C.
210 N. Valley Mills Dr., Suite 500
Waco, TX 76710

Thomas Schmidt
Schmidt Law Firm
7880 San Felipe
Suite 210
Houston, Texas 77063

R. Dunn Family Trust
c/o Michael J. Durrschmidt
Hirsch & Westheimer, P.C.
1415 Louisiana, 36th Floor
Houston, TX 77002

David W. Anderson
Law Office of David W. Anderson
P.O. Box 6152
Kingwood, Texas 77325

Christine A. March
U.S. Trustee
United States Bankruptcy Court
515 Rusk Suite 3516
Houston, TX77002

Joseph G. Epstein
Sean B. Davis
WINSTEAD PC
1100 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002

Ewing Construction
615 Oliver Ct.
Corpus Christi, TX 78408

MESA Asset Management, LLC
c/o A. Stephen Trevino
3016 Rice Blvd.
Houston, TX 77005

Attn: Compass Bank Department
Ascension Capital Group
Account: XXXXX9364
P. O. Box 201347
Arlington, TX 76006

Bryan Stanley
c/o Peter Johnson
Atty at Law
Eleven Greenway Plaza
Suite 2820
Houston, Texas 77046

Michael Hazelwood
19807 Sternwood Manor Drive
Spring, Texas 77379

Bill Ewing
3730 Santa Fe
Corpus Christi, TX 78411

Gregory O. Kaden
A Professional Corporation
400 Atlantic Avenue
Boston, Massachusetts 02110-3333